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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE CONAGRA FOODS, INC.

Case No. CV 11-05379-MMM (AGRx)

MDL NO. 2291

CLASS ACTION

CONSOLIDATED AMENDED CLASS
ACTION COMPLAINT

JURY TRIAL DEMANDED

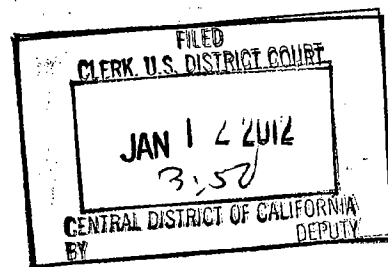


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1 such that any United States consumer who purchases Wesson Oils is exposed to
2 ConAgra's "100% Natural" claim.

3 3. This claim is deceptive and misleading because Wesson Oils are made
4 with unnatural ingredients. Specifically, Wesson Oils are made with GMO-plants
5 whose genes have been altered by scientists in a lab for the express purpose of
6 causing those plants to exhibit traits that are not naturally their own. GMO are not
7 natural by design.

8 4. Accordingly, ConAgra misleads and deceives reasonable consumers,
9 including the named Plaintiffs and the other members of the Class, by portraying a
10 product made from unnatural ingredients as "100% Natural."

11 5. ConAgra's conduct harms consumers by inducing them to purchase
12 and consume a product with GMO on the false premise that the product (Wesson
13 Oils) is "100% Natural."

14 6. Plaintiffs bring this lawsuit against ConAgra individually and on
15 behalf of both a nationwide class and the State Law Subclasses of all other
16 similarly situated purchasers of Wesson Oils due to ConAgra's misleading and
17 deceptive marketing of Wesson Oils as "100% Natural." Plaintiffs allege claims
18 for violations of the Nebraska Consumer Protection Act, the Nebraska Unfair and
19 Deceptive Trade Practices Act, Neb. Rev. Stat. § 59-1602, et seq., the Magnusson-
20 Moss Warranty Act, 15 U.S.C. § 2301, et seq., and for untrue and misleading
21 advertising, unfair competition, unfair and deceptive acts and practices, breach of
22 express warranty, breach of implied warranty, and/or unjust enrichment under the
23 statutory and common laws of the states in which the named Plaintiffs reside.

24 **JURISDICTION AND VENUE**

25 7. On October 13, 2011, the Judicial Panel on Multidistrict Litigation
26 ("JPML") ordered all related actions filed outside this District to be transferred
27 here for all pre-trial proceedings under 28 U.S.C. § 1407.

1 Throughout the Class Period, ConAgra labeled and advertised Wesson Canola Oil
2 as "100% Natural." During the Class Period, Mr. Briseño saw "100% Natural" in
3 ConAgra's advertisements approximately once a week on the label of Wesson
4 Canola Oil bottles in stores, several times per year in print and television
5 advertisements, and at least weekly on the packaging of Wesson Canola Oil in his
6 home. Mr. Briseño purchased Wesson Canola Oil because he believed and relied
7 on ConAgra's representations that Wesson Canola Oil was "100% Natural." Mr.
8 Briseño would not have purchased Wesson Canola Oil but for ConAgra's
9 misrepresentation that Wesson Canola Oil is "100% Natural." Mr. Briseño was
10 injured in fact and lost money as a result of ConAgra misrepresenting Wesson
11 Canola Oil as "100% Natural." Mr. Briseño paid for a "100% Natural" product,
12 but did not receive a product that was 100% natural. Instead, Mr. Briseño received
13 a product that was genetically engineered in a laboratory, and had its genetic code
14 artificially altered to exhibit not natural qualities.

15 **Christi Toomer**

16 14. Christi Toomer is a consumer residing in California. During the Class
17 Period, Ms. Toomer purchased Wesson Canola Oil at Wal-Mart for her and her
18 family's personal consumption. Throughout the Class Period, ConAgra labeled
19 and advertised Wesson Canola Oil as "100% Natural." During the Class Period,
20 Ms. Toomer saw ConAgra claim Wesson Canola Oil is "100% Natural" in
21 ConAgra's advertisements several times annually in print media, including
22 coupons, and in television advertisements, approximately once a week on the
23 packaging of Wesson Canola Oil bottles in retail stores, and approximately daily
24 on the packaging of Wesson Canola Oil bottles in her home. Ms. Toomer
25 purchased Wesson Canola Oil because she believed and relied on ConAgra's
26 representations that Wesson Canola Oil is "100% Natural." Ms. Toomer would
27 not have purchased Wesson Canola Oil but for ConAgra's misrepresentation that
28 Wesson Canola Oil is "100% Natural." Ms. Toomer was injured in fact and lost

1 money as a result of ConAgra misrepresenting Wesson Canola Oil as “100%
2 Natural.” Ms. Toomer paid for a “100% Natural” product, but did not receive a
3 product that was 100% natural. Instead, Ms. Toomer received a product that was
4 genetically engineered in a laboratory, and had its genetic code artificially altered
5 to exhibit not natural qualities.

6 **Michele Andrade**

7 15. Plaintiff Michele Andrade is a consumer residing in California.
8 During the Class Period, Ms. Andrade purchased Wesson Canola Oil
9 approximately one or two times per year for her and her family’s consumption,
10 most recently in June 2011. Throughout the Class Period, ConAgra labeled and
11 advertised Wesson Canola Oil as “100% Natural.” During the Class Period, Ms.
12 Andrade saw ConAgra market Wesson Canola Oil as “100% Natural” at least once
13 in a magazine advertisement, and repeatedly on Wesson Canola Oil labels she saw
14 in stores and in her home. Ms. Andrade purchased Wesson Canola Oil because she
15 believed and relied on ConAgra’s representations that Wesson Canola Oil is
16 “100% Natural.” Ms. Andrade would not have purchased Wesson Canola Oil but
17 for ConAgra’s misrepresentation that Wesson Canola Oil is “100% Natural.” Ms.
18 Andrade was injured in fact and lost money as a result of ConAgra misrepresenting
19 Wesson Canola Oil as “100% Natural.” Ms. Andrade paid for a “100% Natural”
20 product, but did not receive a product that was 100% natural. Instead, Ms.
21 Andrade received a product that was genetically engineered in a laboratory, and
22 had its genetic code artificially altered to exhibit not natural qualities.

23 **Lil Marie Birr**

24 16. Plaintiff Lil Marie Birr is a consumer and restaurant general manager
25 residing in California. During the Class Period, Ms. Birr purchased Wesson Oils
26 regularly for her own use and her restaurant’s use. Throughout the Class Period,
27 ConAgra labeled and advertised Wesson Oils as “100% Natural.” During the
28 Class Period, Ms. Birr saw ConAgra market Wesson Oils as “100% Natural”

1 several times in television advertisements, and repeatedly on Wesson Oil labels she
2 saw in stores, in her home, and in the restaurant she manages. Ms. Birr purchased
3 Wesson Oils because she believed and relied on ConAgra's representations that
4 Wesson Oils are "100% Natural." Ms. Birr would not have purchased Wesson
5 Oils but for ConAgra's misrepresentation that Wesson Oils are "100% Natural."
6 Ms. Birr was injured in fact and lost money as a result of ConAgra misrepresenting
7 Wesson Oils as "100% Natural." Ms. Birr paid for a "100% Natural" product, but
8 did not receive a product that was 100% natural. Instead, Ms. Birr received a
9 product that was genetically engineered in a laboratory, and had its genetic code
10 artificially altered to exhibit not natural qualities.

11 **Colorado Plaintiff**

12 **Jill Crouch**

13 17. Plaintiff Jill Crouch is a consumer residing in Colorado. During the
14 Class Period, Ms. Crouch purchased Wesson Canola Oil approximately two times
15 per year for her and her family's consumption, most recently around May or June
16 2011. Throughout the Class Period, ConAgra labeled and advertised Wesson
17 Canola Oil as "100% Natural." During the Class Period, Ms. Crouch saw
18 ConAgra market Wesson Canola Oil as "100% Natural" on Wesson Canola Oil
19 product packaging a few times per month when she went shopping in retail stores,
20 on approximately a weekly basis when she saw the "100% Natural" claim on the
21 packaging of Wesson Canola Oil products in her home, and approximately one or
22 two times annually in print or television advertisements. Ms. Crouch purchased
23 Wesson Canola Oil because she believed and relied on ConAgra's representations
24 that Wesson Canola Oil is "100% Natural." Ms. Crouch would not have purchased
25 Wesson Canola Oil but for ConAgra's misrepresentation that Wesson Canola Oil is
26 "100% Natural." Ms. Crouch was injured in fact and lost money as a result of
27 ConAgra misrepresenting Wesson Canola Oil as "100% Natural." Ms. Crouch
28 paid for a "100% Natural" product, but did not receive a product that was 100%

1 natural. Instead, Ms. Crouch received a product that was genetically engineered in
2 a laboratory, and had its genetic code artificially altered to exhibit not natural
3 qualities.

4 **Florida Plaintiffs**

5 **Julie Palmer**

6 18. Plaintiff Julie Palmer is a consumer residing in Florida. During the
7 Class Period, Ms. Palmer purchased Wesson Canola Oil as her needs arose for her
8 and her family's consumption. Throughout the Class Period, ConAgra labeled and
9 advertised Wesson Canola Oil as "100% Natural." During the Class Period, Ms.
10 Palmer saw "100% Natural" in ConAgra's advertisements on Wesson Canola Oil
11 packaging in retail stores approximately on a weekly basis and in print
12 advertisements approximately four or five times per year. Ms. Palmer purchased
13 Wesson Canola Oil because she believed and relied on ConAgra's representations
14 that Wesson Canola Oil is "100% Natural." Ms. Palmer would not have purchased
15 Wesson Canola Oil, but for ConAgra's misrepresentation that it is "100% Natural."
16 Ms. Palmer was injured in fact and lost money as a result of ConAgra
17 misrepresenting Wesson Canola Oil as "100% Natural." Ms. Palmer paid for a
18 "100% Natural" product, but did not receive a product that was 100% natural.
19 Instead, Ms. Palmer received a product that was genetically engineered in a
20 laboratory, and had its genetic code artificially altered to exhibit not natural
21 qualities.

22 **Janeth Ruiz**

23 19. Plaintiff Janeth Ruiz is a consumer residing in Florida. During the
24 Class Period, Ms. Ruiz purchased Wesson Oils approximately once per month for
25 her and her family's consumption. Throughout the Class Period, ConAgra labeled
26 and advertised Wesson Oils as "100% Natural." During the Class Period, Ms.
27 Ruiz saw ConAgra represent that Wesson Oils are "100% Natural" several times in
28 television advertisements, at least monthly on the packaging of Wesson Oil bottles

1 in retail stores, and approximately weekly on the packaging of Wesson Oil bottles
2 in her home. Ms. Ruiz purchased Wesson Oils because she believed and relied on
3 ConAgra's representations that Wesson Oils are "100% Natural." Ms. Ruiz would
4 not have purchased Wesson Oils, but for ConAgra's misrepresentation that they
5 are "100% Natural." Ms. Ruiz was injured in fact and lost money as a result of
6 ConAgra misrepresenting Wesson Oils as "100% Natural." Ms. Ruiz paid for a
7 "100% Natural" product, but did not receive a product that was 100% natural.
8 Instead, Ms. Ruiz received a product that was genetically engineered in a
9 laboratory, and had its genetic code artificially altered to exhibit not natural
10 qualities.

11 **Illinois Plaintiff**

12 **Pauline Michael**

13 20. Plaintiff Pauline Michael is a consumer residing in Illinois. During
14 the Class Period, Ms. Michael purchased Wesson Vegetable Oil approximately
15 twice per year for her and her family's consumption. Throughout the Class Period,
16 ConAgra labeled and advertised Wesson Vegetable Oil as "100% Natural."
17 During the Class Period, Ms. Michael saw Wesson Vegetable Oil marketed as
18 "100% Natural" approximately daily on the packaging of Wesson Vegetable Oil
19 bottles in her home, a couple times per year on the packaging of Wesson Vegetable
20 Oil bottles in retail stores, and several times in coupon advertisements. Ms.
21 Michael purchased Wesson Vegetable Oil because she believed and relied on
22 ConAgra's representations that Wesson Vegetable Oil is "100% Natural." Ms.
23 Michael would not have purchased Wesson Vegetable Oil, but for ConAgra's
24 misrepresentation that it is "100% Natural." Ms. Michael was injured in fact and
25 lost money as a result of ConAgra misrepresenting Wesson Vegetable Oil as
26 "100% Natural." Ms. Michael paid for a "100% Natural" product, but did not
27 receive a product that was 100% natural. Instead, Ms. Michael received a product
28

1 that was genetically engineered in a laboratory, and had its genetic code artificially
2 altered to exhibit not natural qualities.

3 **Indiana Plaintiff**

4 **Cheri Shafstall**

5 21. Plaintiff Cheri Shafstall is a consumer residing in Indiana. During the
6 Class Period, Ms. Shafstall purchased at least one bottle of Wesson Canola Oil for
7 her and her family's consumption. Throughout the Class Period, ConAgra labeled
8 and advertised Wesson Canola Oil as "100% Natural." During the Class Period,
9 Ms. Shafstall saw Wesson Canola Oil marketed as "100% Natural" in print
10 advertisements, including coupons, on the packaging of Wesson Canola Oil bottles
11 in retail stores approximately once a month, and repeatedly on the packaging of
12 Wesson Canola Oil in her home. Ms. Shafstall purchased Wesson Canola Oil
13 because she believed and relied on ConAgra's representations that Wesson Canola
14 Oil is "100% Natural." Ms. Shafstall would not have purchased Wesson Canola
15 Oil, but for ConAgra's misrepresentation that it is "100% Natural." Ms. Shafstall
16 was injured in fact and lost money as a result of ConAgra misrepresenting Wesson
17 Canola Oil as "100% Natural." Ms. Shafstall paid for a "100% Natural" product,
18 but did not receive a product that was 100% natural. Instead, Ms. Shafstall
19 received a product that was genetically engineered in a laboratory, and had its
20 genetic code artificially altered to exhibit not natural qualities.

21 **Massachusetts Plaintiff**

22 **Bonnie McDonald**

23 22. Plaintiff Bonnie McDonald is a consumer residing in Massachusetts.
24 During the Class Period, Ms. McDonald purchased Wesson Oils approximately
25 every few months for her and her family's consumption. Throughout the Class
26 Period, ConAgra labeled and advertised Wesson Oils as "100% Natural." During
27 the Class Period, Ms. McDonald saw Wesson Oils marketed as "100% Natural" in
28 television advertisements approximately a couple times per year, in print

1 advertisements every three to four months, on product packaging in retail stores
2 every other month, and on product packaging of Wesson Oils in her home once a
3 week. Ms. McDonald purchased Wesson Oils because she believed and relied on
4 ConAgra's representations that Wesson Oils are "100% Natural." Ms. McDonald
5 would not have purchased Wesson Oils, but for ConAgra's misrepresentation that
6 they are "100% Natural." McDonald was injured in fact and lost money as a result
7 of ConAgra misrepresenting Wesson Oils as "100% Natural." Ms. McDonald paid
8 for a "100% Natural" product, but did not receive a product that was 100% natural.
9 Instead, Ms. McDonald received a product that was genetically engineered in a
10 laboratory, and had its genetic code artificially altered to exhibit not natural
11 qualities.

12 **Nebraska Plaintiff**

13 **Dee Hopper-Kercheval**

14 23. Plaintiff Dee Hopper-Kercheval is a consumer residing in Nebraska.
15 During the Class Period, Ms. Hopper-Kercheval purchased Wesson Canola Oil
16 approximately once per month for her and her family's consumption. Throughout
17 the Class Period, ConAgra labeled and advertised Wesson Canola Oil as "100%
18 Natural." During the Class Period, Ms. Hopper-Kercheval saw Wesson Canola Oil
19 marketed as "100% Natural" on the product packaging of Wesson Canola Oil
20 bottles she purchased and kept in her home. Ms. Hopper-Kercheval purchased
21 Wesson Canola Oil because she believed and relied on ConAgra's representations
22 that Wesson Canola Oil is "100% Natural." Ms. Hopper-Kercheval would not
23 have purchased Wesson Canola Oil, but for ConAgra's misrepresentation that it is
24 "100% Natural." Ms. Hopper-Kercheval was injured in fact and lost money as a
25 result of ConAgra misrepresenting Wesson Canola Oil as "100% Natural." Ms.
26 Hopper-Kercheval paid for a "100% Natural" product, but did not receive a
27 product that was 100% natural. Instead, Ms. Hopper-Kercheval received a product
28

1 that was genetically engineered in a laboratory, and had its genetic code artificially
2 altered to exhibit not natural qualities.

3 **New Jersey Plaintiffs**

4 **Brenda Krein**

5 24. Plaintiff Brenda Krein is a consumer residing in New Jersey. During
6 the Class Period, Ms. Krein purchased a bottle of Wesson Vegetable Oil at a retail
7 store in New Jersey for her and her family's consumption. Throughout the Class
8 Period, ConAgra labeled and advertised Wesson Vegetable Oil as "100% Natural."
9 During the Class Period, Ms. Krein repeatedly saw Wesson Vegetable Oils
10 marketed as "100% Natural" on the packaging of Wesson Vegetable Oil bottles.
11 Ms. Krein purchased Wesson Vegetable Oils because she believed and relied on
12 ConAgra's representations that Wesson Vegetable Oils are "100% Natural." Ms.
13 Krein would not have purchased Wesson Vegetable Oils, but for ConAgra's
14 misrepresentation that they are "100% Natural." Ms. Krein was injured in fact and
15 lost money as a result of ConAgra misrepresenting Wesson Vegetable Oils as
16 "100% Natural." Ms. Krein paid for a "100% Natural" product, but did not receive
17 a product that was 100% natural. Instead, Ms. Krein received a product that was
18 genetically engineered in a laboratory, and had its genetic code artificially altered
19 to exhibit not natural qualities.

20 **Phyllis Scarpelli**

21 25. Plaintiff Phyllis Scarpelli is a consumer residing in New Jersey.
22 During the Class Period, Ms. Scarpelli purchased Wesson Corn Oil approximately
23 once every two months at the ShopRite Supermarket in Carteret, New Jersey, for
24 her and her family's consumption. Throughout the Class Period, ConAgra labeled
25 and advertised Wesson Corn Oil as "100% Natural." During the Class Period, Ms.
26 Scarpelli saw Wesson Corn Oil marketed as "100% Natural" around two times per
27 week on the label of the Wesson Corn Oil bottle she owned, approximately once
28 per week in ShopRite weekly circulars, and on the label when purchasing Wesson

1 Corn Oil. Ms. Scarpelli purchased Wesson Corn Oil because she believed and
2 relied on ConAgra's representations that Wesson Corn Oil is "100% Natural." Ms.
3 Scarpelli would not have purchased Wesson Corn Oil, but for ConAgra's
4 misrepresentation that it is "100% Natural." Ms. Scarpelli was injured in fact and
5 lost money as a result of ConAgra misrepresenting Wesson Corn Oils as "100%
6 Natural." Ms. Scarpelli paid for a "100% Natural" product, but did not receive a
7 product that was 100% natural. Instead, Ms. Scarpelli received a product that was
8 genetically engineered in a laboratory, and had its genetic code artificially altered
9 to exhibit not natural qualities.

10 **New York Plaintiffs**

11 **Kelly McFadden**

12 26. Plaintiff Kelly McFadden is a consumer residing in New York.
13 Throughout the Class Period, Ms. McFadden purchased Wesson Corn Oil
14 approximately two or three times per month for her and her family's consumption.
15 Throughout the Class Period, ConAgra labeled and advertised Wesson Corn Oil as
16 "100% Natural." During the Class Period, Ms. McFadden saw Wesson Corn Oils
17 marketed as "100% Natural" on the Wesson Oil website and on Wesson Corn Oil
18 labels. Ms. McFadden purchased Wesson Corn Oil because Ms. McFadden
19 believed and relied on ConAgra's representations that Wesson Corn Oil is "100%
20 Natural." Ms. McFadden would not have purchased Wesson Corn Oil, but for
21 ConAgra's misrepresentation that Wesson Corn Oil was "100% Natural." Ms.
22 McFadden was injured in fact and lost money as a result of ConAgra
23 misrepresenting Wesson Corn Oil as "100% Natural." Ms. McFadden paid for a
24 100% natural product, but did not receive a product that was 100% natural.
25 Instead, Ms. McFadden received a product that was genetically engineered in a
26 laboratory, and had its genetic code artificially altered to exhibit not natural
27 qualities.
28

Necla Musat

27. Plaintiff Necla Musat is a consumer residing in New York. During the Class Period, Ms. Musat purchased Wesson Vegetable Oil approximately three times per year for her and her family's consumption. Throughout the Class Period, ConAgra labeled and advertised Wesson Vegetable Oil as "100% Natural." During the Class Period, Ms. Musat saw Wesson Vegetable Oil marketed as "100% Natural" once or twice on the Wesson Oils website, at least thirty times in the last year in online advertisements, two or three times a year in coupons, at least three times per year in television advertisements, and approximately daily on the packaging of Wesson Vegetable Oil bottles in retail stores and/or in her home. Ms. Musat purchased Wesson Vegetable Oil because she believed and relied on ConAgra's representations that Wesson Vegetable Oil is "100% Natural." Ms. Musat would not have purchased Wesson Vegetable Oil, but for ConAgra's misrepresentation that they are "100% Natural." Ms. Musat was injured in fact and lost money as a result of ConAgra misrepresenting Wesson Vegetable Oil as "100% Natural." Ms. Musat paid for a "100% Natural" product, but did not receive a product that was 100% natural. Instead, Ms. Musat received a product that was genetically engineered in a laboratory, and had its genetic code artificially altered to exhibit not natural qualities.

Ohio Plaintiff

Maureen Towey

28. Plaintiff Maureen Towey is a consumer residing in Ohio. During the Class Period, Ms. Towey purchased Wesson Canola Oil approximately one time per year for her and her family's consumption. Throughout the Class Period, ConAgra labeled and advertised Wesson Canola Oil as "100% Natural." During the Class Period, Ms. Towey repeatedly saw Wesson Canola Oil marketed as "100% Natural" on the packaging of Wesson Canola Oil bottles in retail stores and in her home. Ms. Towey purchased Wesson Canola Oil because she believed and

1 relied on ConAgra's representations that it is "100% Natural." Ms. Towey would
2 not have purchased Wesson Canola Oil, but for ConAgra's misrepresentation that
3 it is "100% Natural." Ms. Towey was injured in fact and lost money as a result of
4 ConAgra misrepresenting Wesson Canola Oil as "100% Natural." Ms. Towey paid
5 for a "100% Natural" product, but did not receive a product that was 100% natural.
6 Instead, Ms. Towey received a product that was genetically engineered in a
7 laboratory, and had its genetic code artificially altered to exhibit not natural
8 qualities.

9 **Oregon Plaintiff**

10 **Erika Heins**

11 29. Plaintiff Erika Heins is a consumer residing in Oregon. During the
12 Class Period, Ms. Heins purchased Wesson Canola Oil approximately twice per
13 month for her consumption. Throughout the Class Period, ConAgra labeled and
14 advertised Wesson Canola Oil as "100% Natural." During the Class Period, Ms.
15 Heins saw Wesson Canola Oil marketed as "100% Natural" in online
16 advertisements once or twice a year, in coupons approximately once a week, on the
17 packaging of Wesson Canola Oil bottles every time she went shopping in retail
18 stores, and on a near daily basis on the packaging of Wesson Canola Oil bottles in
19 her home. Ms. Heins purchased Wesson Canola Oil because she believed and
20 relied on ConAgra's representations that Wesson Canola Oil is "100% Natural."
21 Ms. Heins would not have purchased Wesson Canola Oil, but for ConAgra's
22 misrepresentation that it is "100% Natural." Ms. Heins was injured in fact and lost
23 money as a result of ConAgra misrepresenting Wesson Canola Oil as "100%
24 Natural." Ms. Heins paid for a "100% Natural" product, but did not receive a
25 product that was 100% natural. Instead, Ms. Heins received a product that was
26 genetically engineered in a laboratory, and had its genetic code artificially altered
27 to exhibit not natural qualities.
28

South Dakota Plaintiff

Rona Johnston

30. Plaintiff Rona Johnston is a consumer residing in South Dakota. During the Class Period, Ms. Johnston purchased one bottle each of Wesson Canola Oil and Wesson Corn Oil for her consumption. Throughout the Class Period, ConAgra labeled and advertised Wesson Canola Oil and Wesson Corn Oil as "100% Natural." During the Class Period, Ms. Johnston saw Wesson Canola Oils marketed as "100% Natural" in television advertisements approximately once or twice a month, on the packaging of Wesson Canola Oil and Wesson Corn Oil bottles in retail stores approximately once every six months, and on the packaging of Wesson Canola Oil and Wesson Corn Oil bottles in her home on a daily basis. Ms. Johnston purchased Wesson Canola Oil and Wesson Corn Oil because she believed and relied on ConAgra's representations that Wesson Canola Oil and Wesson Corn Oil are "100% Natural." Ms. Johnston would not have purchased Wesson Canola Oil and Wesson Corn Oil, but for ConAgra's misrepresentation that they are "100% Natural." Ms. Johnston was injured in fact and lost money as a result of ConAgra misrepresenting Wesson Canola Oil and Wesson Corn Oil as "100% Natural." Ms. Johnston paid for a "100% Natural" product, but did not receive a product that was 100% natural. Instead, Ms. Johnston received a product that was genetically engineered in a laboratory, and had its genetic code artificially altered to exhibit not natural qualities.

Texas Plaintiff

Anita Willman

31. Plaintiff Anita Willman is a consumer residing in Texas. During the Class Period, Ms. Willman purchased Wesson Canola Oil approximately once per week for her and her family's consumption. Throughout the Class Period, ConAgra labeled and advertised Wesson Canola Oil as "100% Natural." During the Class Period, Ms. Willman saw Wesson Canola Oil marketed as "100%

1 Natural” on the packaging of Wesson Canola Oil bottles in retail stores
2 approximately once a week and on the packaging of Wesson Canola Oil bottles in
3 her home. Ms. Willman purchased Wesson Canola Oil because she believed and
4 relied on ConAgra’s representations that Wesson Canola Oil is “100% Natural.”
5 Ms. Willman would not have purchased Wesson Canola Oil, but for ConAgra’s
6 misrepresentation that it is “100% Natural.” Ms. Willman was injured in fact and
7 lost money as a result of ConAgra misrepresenting Wesson Canola Oil as “100%
8 Natural.” Ms. Willman paid for a “100% Natural” product, but did not receive a
9 product that was 100% natural. Instead, Ms. Willman received a product that was
10 genetically engineered in a laboratory, and had its genetic code artificially altered
11 to exhibit not natural qualities.

12 **Washington Plaintiff**

13 **Anne Cowan**

14 32. Plaintiff Anne Cowan is a consumer residing in Washington. During
15 the Class Period, Ms. Cowan purchased Wesson Vegetable Oil approximately once
16 every two months, and more recently once every couple of months, for her and her
17 family’s consumption. Throughout the Class Period, ConAgra labeled and
18 advertised Wesson Vegetable Oil as “100% Natural.” During the Class Period,
19 Ms. Cowan saw Wesson Vegetable Oil marketed as “100% Natural” in print
20 advertisements approximately two to three times per month, on the packaging of
21 Wesson Vegetable Oil bottles in retail stores a couple times per month, and on the
22 packaging of Wesson Vegetable Oil in her home approximately four times per
23 month. Ms. Cowan purchased Wesson Vegetable Oil because she believed and
24 relied on ConAgra’s representations that Wesson Vegetable Oil is “100% Natural.”
25 Ms. Cowan would not have purchased Wesson Vegetable Oil, but for ConAgra’s
26 misrepresentation that it is “100% Natural.” Ms. Cowan was injured in fact and
27 lost money as a result of ConAgra misrepresenting Wesson Vegetable Oil as
28 “100% Natural.” Ms. Cowan paid for a “100% Natural” product, but did not

1 receive a product that was 100% natural. Instead, Ms. Cowan received a product
2 that was genetically engineered in a laboratory, and had its genetic code artificially
3 altered to exhibit not natural qualities.

4 **Wyoming Plaintiff**

5 **Patty Boyer**

6 33. Plaintiff Patty Boyer is a consumer residing in Wyoming. During the
7 Class Period, Ms. Boyer purchased Wesson Oils approximately once per year for
8 her and her family's consumption. Throughout the Class Period, ConAgra labeled
9 and advertised Wesson Oils as "100% Natural." During the Class Period, Ms.
10 Boyer saw Wesson Oils marketed as "100% Natural" on Wesson Oils packaging
11 on an approximately twice monthly basis when she went shopping in retail stores,
12 on approximately a weekly basis when she saw the "100% Natural" claim on the
13 packaging of Wesson Oil products in her home, and also saw the claim in printed
14 coupon advertisements, though she cannot recall how often. Ms. Boyer purchased
15 Wesson Oils because she believed and relied on ConAgra's representations that
16 Wesson Oils are "100% Natural." Ms. Boyer would not have purchased Wesson
17 Oils, but for ConAgra's misrepresentation that they are "100% Natural." Ms.
18 Boyer was injured in fact and lost money as a result of ConAgra misrepresenting
19 Wesson Oils as "100% Natural." Ms. Boyer paid for a "100% Natural" product,
20 but did not receive a product that was 100% natural. Instead, Ms. Boyer received a
21 product that was genetically engineered in a laboratory, and had its genetic code
22 artificially altered to exhibit not natural qualities.

23 **II. Defendant**

24 34. ConAgra is a Delaware corporation with its headquarters located in
25 Omaha, Nebraska. Among other activities, ConAgra manufactures, markets,
26 distributes, and sells Wesson Oils. The Wesson brand is part of ConAgra's
27 Consumer Foods segment. ConAgra owns consumer foods manufacturing
28 facilities in thirty-nine states, including California, and is registered as an active

1 corporation with the California Secretary of State. ConAgra claims that its
2 products are in 96 percent of American households and reported over \$12 billion in
3 net sales for fiscal year 2010, with an operating profit of over \$1.6 billion.

4 **FACTUAL ALLEGATIONS**

5 **ConAgra Advertises and Markets Wesson Oils as “100% Natural”**

6 35. Throughout the Class Period, ConAgra systematically marketed and
7 advertised Wesson Oils as “100% Natural” in product packaging, print
8 advertisements (e.g., coupons or magazine advertisements), both visually and
9 audibly in television commercials, and on the Wesson Oils website
10 (www.wessonoil.com).

11 36. ConAgra labels every bottle of Wesson Oils as “100% Natural” in
12 large, bright green letters on the front of the bottle as illustrated in the
13 representative images of Wesson Oils product packaging reproduced below:





37. In addition to “100% Natural” appearing in vibrant green on the label, “Wesson” is haloed by the image of the sun. Wesson Canola Oil also features a picture of a green heart. The imagery on the Wesson Oils labels reinforces ConAgra’s “100% Natural” claim.

38. ConAgra also prominently features its “100% Natural” claim in numerous locations throughout the Wesson Oils website, including stating:

(a) “Wesson | Pure, 100% Natural Oils” in the title bar for of the Wesson Oils website;

(b) “Pure Wesson 100% Natural Canola Oil is the most versatile type of vegetable oil and it provides the best nutritional balance of all popular cooking oils . . . Pure Wesson 100 percent Natural Canola Oil is good for your heart.” at http://www.wessonoil.com/canola_oil.jsp;

(c) “Pure Wesson 100% Natural Oil is the perfect all-purpose cooking and baking vegetable oil.” at http://www.wessonoil.com/vegetable_oil.jsp;

(d) “Pure Wesson 100% Natural Corn Oil is the best oil to ensure a crispy [sic] coating on your fried foods while retaining moistness on the inside.” at http://www.wessonoil.com/corn_oil.jsp; and

1 (e) "Pure Wesson 100% Natural Best Blend Oil is highly
2 versatile." at http://www.wessonoil.com/best_blend.jsp.

3 39. By consistently and systematically marketing and advertising Wesson
4 Oils as "100% Natural" throughout the Class Period, ConAgra ensured that all
5 consumers purchasing Wesson Oils would be exposed to ConAgra's "100%
6 Natural" claim.

7 40. A claim that a product is "natural" is material to a reasonable
8 consumer.

9 41. This is evidenced by ConAgra marketing Wesson Oils as "100%
10 Natural" throughout the Class Period in nearly every media format, and on the
11 front label of all bottles of Wesson Oils.

12 **Genetically-Modified Organisms Are Not Natural**

13 42. Genetically-modified organisms ("GMO") are not natural, let alone
14 "100% Natural."

15 43. This is evidenced by the statements of the companies that make GMO,
16 such as Monsanto. Monsanto defines GMO as "Plants or animals that *have had*
17 *their genetic makeup altered to exhibit traits that are not naturally theirs*. In
18 general, genes are taken (copied) from one organism that shows a desired trait and
19 transferred into the genetic code of another organism." Monsanto Glossary,
20 <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited Jan. 9,
21 2012) (emphasis added). As more fully alleged below, "unnatural" is a defining
22 characteristic of genetically modified foods.

23 44. Romer Labs, a company that provides diagnostic solutions to the
24 agricultural industry, defines GMO as "[a]griculturally important plants [that] are
25 often genetically modified by the insertion of DNA material from outside the
26 organism into the plant's DNA sequence, allowing the plant to *express novel traits*
27 *that normally would not appear in nature*, such as herbicide or insect resistance.
28 Seed harvested from GMO plants will also contain these [sic] modification."

1 Romer Labs, [http://www.romerlabs.com/en/analytes/genetically-modified-](http://www.romerlabs.com/en/analytes/genetically-modified-organisms.html)
2 [organisms.html](http://www.romerlabs.com/en/analytes/genetically-modified-organisms.html) (last visited Jan. 9, 2012) (emphasis added).

3 45. That GMO are not natural is further evidenced by the explanations of
4 health and environmental organizations, such as The World Health Organization,
5 which defines genetically-modified organisms as “organisms in which the genetic
6 material (DNA) *has been altered in a way that does not occur naturally*. The
7 technology is often called ‘modern biotechnology’ or ‘gene technology’,
8 sometimes also ‘recombinant DNA technology’ or ‘genetic engineering’. It allows
9 selected individual genes to be transferred from one organism into another, also
10 between non-related species. Such methods are used to create GM plants – which
11 are then used to grow GM food crops.” World Health Organization, *20 Questions*
12 *on Genetically Modified (GM) Foods* at [http://www.who.int/foodsafety/](http://www.who.int/foodsafety/publications/biotech/en/20questions_en.pdf)
13 [publications/biotech/en/20questions_en.pdf](http://www.who.int/foodsafety/publications/biotech/en/20questions_en.pdf) (last visited Jan. 9, 2012).

14 46. The Environmental Protection Agency has distinguished conventional
15 breeding of plants “through natural methods, such as cross-pollination” from
16 genetic engineering using modern scientific techniques. See United States
17 Environmental Protection Agency, Prevention, Pesticides and Toxic Substances,
18 *Questions & Answers Biotechnology: Final Plant-Pesticide/Plant Incorporated*
19 *Protectants (PIPs) Rules* (Jul. 19, 2001) at [http://www.epa.gov/scipoly/biotech/](http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf)
20 [pubs/qanda.pdf](http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf) (“**Conventional breeding** is a method in which genes for pesticidal
21 traits are introduced into a plant *through natural methods*, such as cross-
22 pollination. . . . Genetically engineered plant-incorporated protectants are created
23 through a process that utilizes several different modern scientific techniques to
24 introduce a specific pesticide-producing gene into a plant’s DNA genetic
25 material.”) (emphasis of “through natural methods” added; remaining emphasis in
26 original).

27 47. As indicated by the definitions above, which come from a wide array
28 of sources, including industry, government, and health organizations, GMO are not

1 “100% Natural.” GMO are “created” artificially in a laboratory through genetic
2 engineering. Thus, by claiming Wesson Oils are “100% Natural,” deceives and
3 misleads reasonable consumers.

4 **Wesson Oils Are Made From GMO**

5 48. Wesson Oils are made from GMO, including genetically modified
6 rapeseed (canola oil), soybeans, and corn.

7 49. In the following statement on “Biotechnology” from ConAgra’s
8 corporate website, ConAgra impliedly admits that it uses genetically-modified
9 plants, referred to by ConAgra as “biotech foods,” to make its food products.
10 ConAgra states that its food products not made from genetically-modified plants
11 are limited to ConAgra’s “Lightlife” brand and ConAgra’s food products
12 specifically labeled “organic”:

13 **Biotechnology**

14 In the past two decades, biotechnology has been used to improve
15 yield, nutrition, resistance to drought and insects, and other desirable
16 qualities of several common food crops, including corn and soy. As
17 consumers grow more conscious about the types of foods they put in
18 their bodies, some have asked about the role of biotechnology in food
19 production and health.

20 *As such, ConAgra Foods only purchases and uses ingredients that*
21 *comply with the U.S. Department of Agriculture and Food and Drug*
22 *Administration (FDA) regulations for food safety and nutrition.*
23 *Both the U.S. Environmental Protection Agency and the FDA have*
24 *concluded that biotech foods that are approved for human*
25 *consumption are as safe and nutritious as other foods that are*
26 *developed through more conventional methods.*

27 However, we understand the field of food biotechnology is constantly
28 shifting as advancements are made in the world of science, and will

1 continue to reevaluate our internal policies, relying heavily on
2 evolving science, consumer and customer expectations, and regulatory
3 decisions.

4 *Ultimately, consumers will decide what is acceptable in the*
5 *marketplace based on the best science and public information*
6 *available. We will continue to listen carefully to our customers and*
7 *consumers on biotechnology and provide alternatives for those who*
8 *demand products without biotechnology ingredients. Two choices*
9 *are our Lightlife brand, which is manufactured using non-GMO soy*
10 *seeds, and our organic foods, which also do not use biotech*
11 *ingredients.*

12 <http://company.conagrafoods.com/phoenix.zhtml?c=202310&p=biotechnology>
13 (emphasis added) (last visited Jan. 9, 2012).

14 50. Although ConAgra says that “consumers will decide what is
15 acceptable in the marketplace,” ConAgra’s Wesson Oils’ labeling and advertising
16 robs consumers of the ability to make an *informed* decision because they are told
17 that Wesson Oils are “100% Natural.” Further, reasonable consumers who observe
18 ConAgra’s claim that Wesson Oils are “100% Natural” have no reason to “demand
19 products *without biotechnology ingredients*”—the “100% Natural” labeling and
20 advertising represents to consumers that they are getting biotech-free food.

21 **ConAgra Deceptively Markets Wesson Oils as “100% Natural” to Boost Sales**

22 51. ConAgra markets and advertises its Wesson Oils as “100% Natural”
23 to bolster ConAgra’s sales of Wesson Oils for its own substantial financial gain.

24 52. ConAgra recognizes that consumers rely on “trusted seals, standards
25 and symbols of higher quality” when making food product shopping decisions, and
26 further recognizes that “Natural” is among the top eight trustmarks consumers look
27 for when making purchases. For example, in a News Release dated May 8, 2006,
28 ConAgra states as follows:

1 *To determine what they should consider “better food,” many*
2 *consumers are turning to trusted seals, standards and symbols of*
3 *higher quality—indeed, more than nine in 10 Americans today*
4 *consider trust marks to some degree when shopping.*

5 A new “What’s In Store” survey of consumer shopping habits
6 commissioned by ConAgra Foods confirms this trend:

- 7 • *Fully 95 percent of Americans say they would consider quality*
8 *symbols, seals & trust marks when food shopping.*
- 9 • Four times as many survey respondents said they are more
10 likely to consider buying foods based on trust marks today than
11 they were a year ago, compared to only a quarter as many who
12 said less likely.
- 13 • *While many symbols are present in the market today, the top*
14 *eight trust marks consumers look for are: WHOLE GRAINS,*
15 *HEART-HEALTHY, ZERO GRAMS TRANS-FAT, LOW*
16 *SODIUM, NATURAL, DIETARY GUIDELINES, ORGANIC*
17 *& KOSHER.*

18 ConAgra Foods, News Release, ConAgra Foods Survey – Seals & Standards of
19 Quality Give Grocery Shoppers Confidence (May 8, 2006),
20 [http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle](http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle_pf&ID=1008637&highlight)
21 [_pf&ID=1008637&highlight](http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle_pf&ID=1008637&highlight) (emphasis added, footnotes omitted).

22 53. ConAgra labels Wesson Oils as “100% Natural” to take advantage of
23 consumers relying on trustmarks, and to boost its profits.

24 54. As detailed in the allegations above, however, because Wesson Oils
25 are made from genetically-modified plants, ConAgra’s “100% Natural”
26 representations are false, deceptive, misleading, and unfair to consumers who are
27 injured in fact by purchasing a product that ConAgra claims is “100% Natural”
28 when it is not.

1 **CLASS ACTION ALLEGATIONS**

2 55. Plaintiffs bring this action on behalf of themselves and as a class
3 action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal
4 Rules of Civil Procedure, on behalf of the following nationwide Class, defined as:

5 All persons who reside in the United States and who have purchased
6 Wesson Oils from June 27, 2007 through the final disposition of this
7 and any and all related actions (the "Class").

8 56. Additionally, Plaintiffs bring this action on behalf of themselves and,
9 pursuant to the Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), the
10 following State Subclasses,² which are defined as:

11 The Consumer Protection States Subclass

12 All persons who reside in the Consumer Protection States³ and who
13 have purchased Wesson Oils from June 27, 2007 through the final
14 disposition of this and any and all related actions (the "Consumer
15 Protection Subclass").

16 The Breach of Express Warranty States Subclass

17 All persons who reside in the Non-Privy Breach of Express
18 Warranty States⁴ and who have purchased Wesson Oils from June 27,
19 2007 through the final disposition of this and any and all related
20 actions (the "Breach of Express Warranty Subclass").

21 The Breach of Implied Warranty States Subclass

22
23 ² Plaintiffs reserve the right to amend all Class and States Subclass definitions at
24 class certification based on additional research and/or changes in state law.

25 ³ The Consumer Protection States are defined hereinafter to include the states of
26 California, Colorado, Florida, Illinois, Massachusetts, New Jersey, New York,
Ohio, Oregon, South Dakota, Texas, Washington, and Wyoming.

27 ⁴ The Non-Privy Breach of Express Warranty States are defined hereinafter to
28 include the states of California, Colorado, Indiana, Massachusetts, Nebraska, New
Jersey, New York, Oregon, South Dakota, Texas, Washington, and Wyoming.

1 All persons who reside in the Non-Privivity Breach of Implied Warranty
2 States⁵ and who have purchased Wesson Oils from June 27, 2007
3 through the final disposition of this and any and all related actions (the
4 “Breach of Implied Warranty Subclass”).

5 The Unjust Enrichment States Subclass

6 All persons who reside in the Unjust Enrichment States⁶ and who
7 have purchased Wesson Oils from June 27, 2007 through the final
8 disposition of this and any and all related actions (the “Unjust
9 Enrichment Subclass”).

10 57. Excluded from the Class and the State Subclasses are ConAgra and its
11 subsidiaries and affiliates; all persons who make a timely election to be excluded
12 from the Class; governmental entities; and the judges to whom this case is assigned
13 and any immediate family members thereof. For ease of reference in this
14 Consolidated Complaint, the Class and the State Subclasses are collectively
15 referred to as the “Class,” unless otherwise noted.

16 58. Certification of Plaintiffs’ claims for class-wide treatment is
17 appropriate because Plaintiffs can prove the elements of their claims on a class-
18 wide basis using the same evidence as would be used to prove those elements in
19 individual actions alleging the same claims.

20 59. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The
21 members of the Class and each of the State Subclasses are so numerous that
22 individual joinder of all Class and States Subclass members is impracticable.

23
24 ⁵ The Non-Privivity Breach of Implied Warranty States are defined hereinafter to
25 include the states of California, Colorado, Indiana, Massachusetts, Nebraska, New
26 Jersey, New York, Ohio, Oregon, South Dakota, Texas, Washington, and
27 Wyoming.

28 ⁶ The Unjust Enrichment States are defined hereinafter to include the states of
California, Colorado, Florida, Illinois, Indiana, Massachusetts, Nebraska, New
Jersey, New York, Ohio, Oregon, South Dakota, Texas, Washington, and
Wyoming.

1 There are millions of individual purchasers of Wesson Oils. The precise number
2 of members of the Class and State Subclasses and their addresses are unknown to
3 Plaintiffs, but may be ascertained from ConAgra's books and records. Members of
4 the Class and State Subclasses may be notified of the pendency of this action by
5 recognized, Court-approved notice dissemination methods, which may include
6 U.S. Mail, electronic mail, Internet postings, and/or published notice.

7 **60. Commonality and Predominance—Federal Rule of Civil**
8 **Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law
9 or fact, which predominate over any questions affecting individual members of the
10 Class and State Subclasses. All members of the Class and State Subclasses were
11 exposed to ConAgra's deceptive and misleading advertising and marketing claim
12 that Wesson Oils are "100% Natural" because that claim was on the label of every
13 container of Wesson Oil sold. Furthermore, common questions of law or fact
14 include:

- 15 (a) whether ConAgra engaged in the conduct as alleged herein;
16 (b) whether ConAgra's practices violate applicable law;
17 (c) whether Plaintiffs and the other members of the Class and State
18 Subclasses are entitled to actual, statutory, or other forms of damages, and other
19 monetary relief; and
20 (d) whether Plaintiffs and the other members of the Class and State
21 Subclasses are entitled to equitable relief, including but not limited to injunctive
22 relief and restitution.

23 **61.** ConAgra engaged in a common course of conduct giving rise to the
24 legal rights sought to be enforced by Plaintiffs individually and on behalf of the
25 other members of the Class and State Subclasses. Similar or identical statutory and
26 common law violations, business practices, and injuries are involved. Individual
27 questions, if any, pale by comparison, in both quality and quantity, to the numerous
28 common questions that dominate this action.

1 **62. Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs’
2 claims are typical of the claims of the other members of the Class and State
3 Subclasses because, among other things, all members of the Class and State
4 Subclasses were comparably injured through the uniform misconduct described
5 above, were subject to ConAgra’s false, deceptive, misleading, and unfair
6 advertising and marketing practices, including the false claim that Wesson Oils are
7 “100% Natural,” found on every container of Wesson Oil sold. Further, there are
8 no defenses available to ConAgra that are unique to Plaintiffs.

9 **63. Adequacy of Representation—Federal Rule of Civil Procedure**
10 **23(a)(4).** Plaintiffs are adequate representatives of the members of the Class and
11 State Subclasses because their interests do not conflict with the interests of the
12 other members of the Class and State Subclasses they seek to represent; they have
13 retained counsel competent and experienced in complex class action litigation; and
14 Plaintiffs will prosecute this action vigorously. The Class’ and State Subclasses’
15 interests will be fairly and adequately protected by Plaintiffs and their counsel.

16 **64. Declaratory and Injunctive Relief—Federal Rule of Civil**
17 **Procedure 23(b)(2).** ConAgra has acted or refused to act on grounds generally
18 applicable to Plaintiffs and the other members of the Class and State Subclasses,
19 thereby making appropriate final injunctive relief and declaratory relief, as
20 described below, with respect to the members of the Class and State Subclasses as
21 a whole.

22 **65. Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class
23 action is superior to any other available means for the fair and efficient
24 adjudication of this controversy, and no unusual difficulties are likely to be
25 encountered in the management of this class action. The damages or other
26 financial detriment suffered by Plaintiffs and the other members of the Class and
27 State Subclasses are relatively small compared to the burden and expense that
28 would be required to individually litigate their claims against ConAgra, so it would

1 be impracticable for members of the Class and State Subclasses to individually
2 seek redress for ConAgra's wrongful conduct. Even if the members of the Class
3 and State Subclasses could afford individual litigation, the court system could not.
4 Individualized litigation creates a potential for inconsistent or contradictory
5 judgments, and increases the delay and expense to all parties and the court system.
6 By contrast, the class action device presents far fewer management difficulties and
7 provides the benefits of single adjudication, economy of scale, and comprehensive
8 supervision by a single court. Given the similar nature of the members of the
9 Class' and State Subclasses' claims and the absence of material differences in the
10 statutes and common laws upon which the Class and State Subclasses members'
11 claims are based when such claims are grouped as proposed above and below, the
12 nationwide Class and the various State Subclasses will be easily managed by the
13 Court and the parties.

14 **CLAIMS FOR RELIEF**

15 **COUNT I**

16 **Violation of the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301, et seq. (Brought on Behalf of the Class)**

17 66. Plaintiffs incorporate by reference paragraphs 1-65 of this
18 Consolidated Complaint as though fully stated herein.

19 67. Plaintiffs bring this claim individually and on behalf of the other Class
20 members.

21 68. The Magnusson-Moss Warranty Act provides a federal remedy for
22 consumers who have been damaged by the failure of a supplier or warrantor to
23 comply with any obligation under a written warranty or implied warranty, or other
24 various obligations established under the Magnusson-Moss Warranty Act.

25 69. Wesson Oils are consumer products within the meaning of the
26 Magnusson-Moss Warranty Act, 15 U.S.C. § 2301(1).

27 70. Plaintiffs and the other Class members are "consumers" within the
28 meaning of the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301(3)

1 71. ConAgra is both a “supplier” and “warrantor” within the meaning of
2 the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301(4) and (5).

3 72. ConAgra’s written statements that Wesson Oils are “100% Natural,”
4 as alleged herein, are made in connection with the sale of Wesson Oils that relate
5 to the nature of Wesson Oils and affirm and promise that such Wesson Oils are
6 defect free, and as such are “written warranties” within the meaning of the
7 Magnusson-Moss Warranty Act, 15 U.S.C. § 2301(6)(A).

8 73. As alleged herein, ConAgra has breached this written warranty by
9 selling consumers Wesson Oils that are not 100% Natural as warranted and thus do
10 not conform to ConAgra’s written warranty, violating the Magnusson-Moss
11 Warranty Act, 15 U.S.C. § 2301, et seq., and causing Plaintiffs and the other Class
12 members injury and damage in an amount to be proven at trial.

13 **COUNT II**
14 **Violation of the Nebraska Consumer Protection Act,**
15 **Neb. Rev. Stat. § 59-1602, et seq.**
16 **(Brought on Behalf of the Class)**

17 74. Plaintiffs incorporate by reference paragraphs 1-65 of this
18 Consolidated Complaint as though fully stated herein.

19 75. Plaintiffs bring this claim individually and on behalf of the other Class
20 members.

21 76. The Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1602, et
22 seq. (“NCPA”) prohibits “unfair methods of competition and unfair or deceptive
23 acts or practices in the conduct of any trade or commerce.”

24 77. ConAgra’s public marketing and sale of Wesson Oils is the conduct of
25 trade or commerce under the NCPA.

26 78. Throughout the Class Period, ConAgra has engaged in a public
27 marketing campaign in which it represented that Wesson Oils are “100%
28 Natural,”—including through product labels, television commercials, print
advertisements, in-store advertisements and/or Internet based advertisements, as

1 described herein—when, in fact, Wesson Oils are not natural, let alone “100%
2 Natural” because they are made from genetically modified ingredients.

3 79. ConAgra made (and continues to make) these representations with the
4 intent of inducing consumers—including Plaintiffs and the other Class members—
5 to purchase Wesson Oils.

6 80. By representing that Wesson Oils are “100% Natural,” ConAgra has
7 engaged in unfair or deceptive acts that have an impact on the public interest
8 generally and that have caused damage to Plaintiffs and the other Class members in
9 an amount to be proven at trial.

10 81. Because ConAgra is headquartered in Nebraska and a substantial
11 amount of the conduct giving rise to this action occurred in Nebraska, where
12 ConAgra either developed or approved of the deceptive and misleading “100%
13 Natural” representations as described herein, the NCPA should apply nationwide to
14 this claim against ConAgra, as these violations directly or indirectly affect the
15 people of Nebraska as well as other consumers nationwide.

16 82. Any person who is injured in their business or property by a violation
17 of the NCPA may bring a civil action to enjoin further violations, to recover actual
18 damages sustained, together with costs of suit, including a reasonable attorney’s
19 fee.

20 83. Pursuant to the NCPA, Plaintiffs and the other Class members are
21 entitled to the relief set forth below, as appropriate, including, but not limited to,
22 compensatory damages, injunctive relief, attorneys’ fees, and the costs of this
23 action, and any other increased damage award permissible under Neb. Rev. Stat. §
24 59-1609.

COUNT III
Violation of the Nebraska Uniform Deceptive Trade Practices Act,
Neb. Rev. Stat. § 87-301, et seq.
(Brought on Behalf of the Class)

84. Plaintiffs incorporate by reference paragraphs 1 - 65 of this Consolidated Complaint as though fully stated herein.

85. Plaintiffs bring this claim individually and on behalf of the other Class members.

86. The Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, et seq. ("NUDTPA") prohibits deceptive trade practices and enumerates, in Neb. Rev. Stat. § 87-302(a), that a person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, he or she:

(a) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(b) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;

(c) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(d) Advertises goods or services with intent not to sell them as advertised or advertises the price in any manner calculated or tending to mislead or in any way deceive a person;

(e) Uses any scheme or device to defraud by means of:

(i) Obtaining money or property by knowingly false or fraudulent pretenses, representations, or promises; or

1 (ii) Selling, distributing, supplying, furnishing, or procuring
2 any property for the purpose of furthering such scheme[.]

3 87. Throughout the Class Period, as part of its business, ConAgra engaged
4 in a public marketing campaign in which it represented that Wesson Oils are
5 “100% Natural,”—including through product labels, television commercials, print
6 advertisements, in-store advertisements and/or Internet based advertisements, as
7 described herein – when, in fact, Wesson Oils are not natural, let alone “100%
8 Natural” because they are made from genetically modified ingredients.

9 88. ConAgra made (and continues to make) these representations with the
10 intent of inducing consumers – including Plaintiffs and the other Class members –
11 to purchase Wesson Oils.

12 89. By representing that Wesson Oils are “100% Natural,” ConAgra has
13 engaged in the deceptive trade practices listed above.

14 90. Because ConAgra is headquartered in Nebraska and a substantial
15 amount of the conduct giving rise to this action occurred in Nebraska, where
16 ConAgra either developed or approved of the deceptive and misleading “100%
17 Natural” representations as described herein, the NUDTPA should apply
18 nationwide to this claim against ConAgra, as ConAgra’s deceptive trade practices
19 were conducted in whole or in part within the State of Nebraska, and the NUDTPA
20 “shall apply to deceptive trade practices conducted in whole or in part within the
21 State of Nebraska against residents or nonresidents of this state.” Neb. Rev. Stat. §
22 87-304(c).

23 91. A person likely to be damaged by a deceptive trade practice of another
24 may bring an action for, and the court may grant, an injunction under the principles
25 of equity against the person committing the deceptive trade practice. The court
26 may order such additional equitable relief as it deems necessary to protect the
27 public from further violations, including temporary and permanent injunctive
28

1 relief. Proof of monetary damage, loss of profits, or intent to deceive is not
2 required.

3 92. Costs shall be allowed to the prevailing party asserting an NUDTPA
4 claim, and the court in its discretion may award attorneys' fees to the prevailing
5 party if the party charged with a deceptive trade practice has willfully engaged in
6 the trade practice knowing it to be deceptive.

7 93. ConAgra knew, or should have known, that its trade practice of
8 marketing Wesson Oils as "100% Natural" was deceptive.

9 94. Pursuant to the NUDTPA, Plaintiffs and the other Class members are
10 entitled to the relief set forth below, as appropriate, including, but not limited to,
11 injunctive relief, attorneys' fees, and the costs of this action.

12 **COUNT IV**

13 **Violation of State Consumer Protection Laws (Brought on Behalf of the Consumer Protection States Subclass)**

14 95. Plaintiffs in the Consumer Protection States Subclass incorporate by
15 reference paragraphs 1-65 of this Consolidated Complaint as though fully stated
16 herein.

17 96. The Plaintiffs in the Consumer Protection States Subclass, in addition
18 to the claims alleged above on behalf of themselves and the other Class members,
19 bring this claim individually and on behalf of all others who purchased Wesson
20 Oils in and reside in the same states as those Plaintiffs.

21 97. Each of the Plaintiffs and proposed Class members in the Consumer
22 Protection States Subclass is a consumer, purchaser, or other person entitled to the
23 protection of the consumer protection laws of the state in which they reside and
24 purchased Wesson Oils.

25 98. The consumer protection laws of the state in which each of the
26 Plaintiffs and proposed Class members in the Consumer Protection States Subclass
27 resides and purchased Wesson Oils declares that unfair or deceptive acts or
28 practices in the conduct of trade or commerce are unlawful.

1 99. All of the Consumer Protection States have enacted statutes designed
2 to protect consumers against unfair, deceptive, fraudulent, and unconscionable
3 trade and business practices, and/or false advertising. Those statutes further allow
4 consumers to bring private and/or class actions. These statutes are:

5 (a) California Consumer Legal Remedies Act, Cal. Civ. Code §
6 1750, *et seq.*; California's Unfair Competition Law, Cal. Bus. & Prof Code §
7 17200, *et seq.*; and Cal. Bus. & Prof. Code § 17500, *et seq.*;

8 (b) Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101,
9 *et seq.*;

10 (c) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat.
11 Ann. § 501.201, *et seq.*;

12 (d) Illinois Consumer Fraud and Deceptive Business Practices Act,
13 815 ILCS § 505/1, *et seq.*;

14 (e) Massachusetts Unfair and Deceptive Practices Act, Mass. Ann.
15 Laws ch. 93A, *et seq.*;

16 (f) Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601,
17 *et seq.*; and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat.
18 § 87- 301, *et seq.*;

19 (g) New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et*
20 *seq.*;

21 (h) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus.
22 Law § 349, *et seq.*;

23 (i) Ohio Consumer Sales Practices Act, Ohio Rev. Code §
24 1345.01, *et seq.*;

25 (j) Oregon Unfair Trade Practices Act, Or. Rev. Stat § 646.605, *et*
26 *seq.*;

27 (k) South Dakota Deceptive Trade Practices and Consumer
28 Protection Law, S.D. Codified Laws § 37 24 1, *et seq.*;

1 (l) Texas Deceptive Trade Practices - Consumer Protection Act,
2 Tex. Bus. & Com. Code § 17.41, *et seq.*;

3 (m) Washington Consumer Protection Act, Wash. Rev. Code §
4 19.86.010, *et seq.*; and

5 (n) Wyoming Consumer Protection Act, Wyo. Stat. § 40-12-101, *et*
6 *seq.*

7 100. Wesson Oils constitute products to which these consumer protection
8 statutes apply.

9 101. To the extent required, the Plaintiffs in the Consumer Protection
10 States Subclass have provided ConAgra notice under each of the above listed
11 statutes.

12 102. In the conduct of trade or commerce regarding the marketing and sale
13 of Wesson Oils, ConAgra engaged in unfair and deceptive acts or practices by
14 representing that Wesson Oils are “100% Natural”—including through product
15 labels, television commercials, print advertisements, in-store advertisements and/or
16 Internet based advertisements, as described herein—when, in fact, Wesson Oils are
17 not natural, let alone “100% Natural” because they are made from genetically
18 modified ingredients.

19 103. ConAgra’s representations and advertisements of Wesson Oils as
20 “100% Natural” were deceptive and likely to deceive consumers, including the
21 Plaintiffs and members of the Consumer Protection States Subclass.

22 104. ConAgra knew or should have known that its representations and
23 advertisements of Wesson Oils as “100% Natural” were untrue or misleading.

24 105. ConAgra used or employed such deceptive and unlawful acts or
25 practices with the intent that the Plaintiffs and other members of the Consumer
26 Protection States Subclass relied thereon or otherwise be deceived.

1 Wesson Oils. The terms of that contract include the promises and affirmations of
2 fact ConAgra makes on Wesson Oils' packaging and through marketing and
3 advertising, including ConAgra's promise that Wesson Oils are "100% Natural,"
4 as described above. This marketing and advertising constitute express warranties
5 and became part of the basis of the bargain, and are part of the standardized
6 contract between each of the Plaintiffs and other members of the Breach of Express
7 Warranty States Subclass, and ConAgra.

8 113. In addition or in the alternative to the formation of an express
9 contract, ConAgra made each of its above-described representations to induce the
10 Plaintiffs and other members of the Breach of Express Warranty States Subclass, to
11 rely on such representations, and they each did so rely (and should be presumed to
12 have relied) on ConAgra's "100% Natural" representations as a material factor in
13 their decision(s) to purchase Wesson Oils.

14 114. All conditions precedent to ConAgra's liability under this contract
15 have been performed by the Plaintiffs and other members of the Breach of Express
16 Warranty States Subclass, when they purchased Wesson Oils for their ordinary
17 purposes.

18 115. At all times relevant to this action, ConAgra has breached its express
19 warranties about Wesson Oils because Wesson Oils are not "100% Natural" but,
20 rather, are derived from genetically-modified organisms or plants that are not 100
21 percent natural, in violation of state express warranty laws, including:

- 22 (a) Cal. Com. Code § 2313;
- 23 (b) Colo. Rev. Stat. § 4-2-313;
- 24 (c) Ind. Code § 26-1-2-313;
- 25 (d) Mass. Gen. Laws Ann. ch. 106 § 2-313;
- 26 (e) Neb. Rev. Stat. § 2-313;
- 27 (f) N.J. Stat. Ann. § 12A:2-313;
- 28 (g) N.Y. U.C.C. Law § 2-313;

- (h) Or. Rev. Stat. § 72.3130;
- (i) S.D. Codified Laws. § 57A-2-313;
- (j) Tex. Bus. & Com. Code Ann. § 2.313;
- (k) Wash. Rev. Code Ann. § 62A.2-313; and
- (l) Wyo. Stat. § 34.1-2-313.

116. The above-listed states do not require privity of contract to recover for breach of express warranty.

117. As a result of ConAgra's breaches of its express warranty, the Plaintiffs and other members of the Breach of Express Warranty States Subclass were damaged in the amount of the purchase price they paid for Wesson Oils, in an aggregate amount to be proven at trial.

118. Within a reasonable time after they knew or should have known of such breach, the Plaintiffs, on behalf of themselves and the other members of the Breach of Express Warranty States Subclass, placed ConAgra on notice thereof.

COUNT VI

Plaintiffs in the Breach of Implied Warranty of Merchantability (Brought on behalf of the Breach of Implied Warranty States Subclass)

119. ntly States Subclass incorporate by reference every paragraph of this Consolidated Complaint as though fully stated herein.

120. The Plaintiffs in the Breach of Implied Warranty States Subclass bring this claim on behalf of themselves and the other members of the Breach of Implied Warranty States Subclass.

121. The Plaintiffs and other members of the Breach of Implied Warranty States Subclass purchased Wesson Oils for the ordinary purposes of cooking oils.

122. By representing that Wesson Oils were "100% Natural" in marketing and advertising as described herein, ConAgra impliedly warranted that such products were of merchantable quality, such that the oils were of the same average grade, quality, and value as similar goods sold under similar circumstances.

1 123. The Plaintiffs and other members of the Breach of Implied Warranty
2 States Subclass relied on ConAgra's representations that Wesson Oils were "100%
3 Natural" when they purchased Wesson Oils.

4 124. ConAgra breached the warranty implied at the time of sale in that the
5 Plaintiffs and other members of the Breach of Implied Warranty States Subclass
6 did not receive goods that were "100% Natural" as represented and thus, the goods
7 were not merchantable as fit for the ordinary purposes for which those goods are
8 used or as promoted, marketed, advertised, packaged, labeled, or sold.

9 125. At all times relevant to this action, ConAgra has breached its implied
10 warranties concerning Wesson Oils because Wesson Oils are not "100% Natural"
11 but are made from GMO. ConAgra's conduct violates the following state implied
12 warranty laws:

- 13 (a) Cal. Com. Code § 2314;
- 14 (b) Colo. Rev. Stat. § 4-2-314 and § 4-2-315;
- 15 (c) Ind. Code § 26-1-2-314 and § 26-1-2-315;
- 16 (d) Mass. Gen. Laws Ann. ch. 106 § 2-314 and § 2-315;
- 17 (e) Neb. Rev. Stat. § 2-314 and § 2-315;
- 18 (f) N.J. Stat. Ann. § 12A:2-314 and § 12A:2-315;
- 19 (g) N.Y. U.C.C. Law § 2-314;
- 20 (h) Ohio Rev. Code § 1302.27;
- 21 (i) Or. Rev. Stat. § 72.8020;
- 22 (j) S.D. Cod. Laws. § 57A-2-314 and § 57A-2-315;
- 23 (k) Tex. Bus. & Com. Code Ann. § 2.314 and § 2.315;
- 24 (l) Wash. Rev. Code Ann. § 62A.2-314; and
- 25 (m) Wyo. Stat. § 34.1-2-314 and § 34.1-2-315.

26 126. The above states do not require privity of contract to recover for
27 breach of implied warranty.

1 127. As a result of the breach of implied warranties, the Plaintiffs and other
2 members of the Breach of Implied Warranty States Subclass have been damaged in
3 the amount of the price they paid for Wesson Oils.

4 128. Within a reasonable time after they knew or should have known of
5 such breach, the Plaintiffs, on behalf of themselves and the other members of the
6 Breach of Implied Warranty States Subclass, placed ConAgra on notice thereof.

7 **COUNT VII**
8 **Unjust Enrichment**
9 **(Brought on Behalf of the Unjust Enrichment States Subclass)**

10 129. Plaintiffs in the Unjust Enrichment States Subclass incorporate by
11 reference Paragraphs 1 - 65 of this Consolidated Complaint as though fully stated
12 herein.

13 130. The Plaintiffs in the Unjust Enrichment States Subclass bring this
14 claim individually and on behalf of the other members of the Unjust Enrichment
15 States Subclass.

16 131. As a result of ConAgra's deceptive, fraudulent, and misleading
17 labeling, advertising, marketing and sales of Wesson Oils, ConAgra was enriched,
18 at the expense of the Plaintiffs and other members of the Unjust Enrichment States
19 Subclass, though the payment of the purchase price for ConAgra's Wesson Oils.

20 132. Under the circumstances, it would be against equity and good
21 conscience to permit ConAgra to retain the ill-gotten benefits that it received from
22 the Plaintiffs and other members of the Unjust Enrichment States Subclass in light
23 of the fact that the Wesson Oils purchased by the Plaintiffs and other members of
24 the Unjust Enrichment States Subclass were not "100% Natural," as ConAgra
25 purports them to be. It would thus be unjust or inequitable for ConAgra to retain
26 the benefit without restitution or disgorgement of monies paid to ConAgra for
27 Wesson Oils, or such other appropriate equitable remedy as appropriate, to the
28 Plaintiffs and other members of the Unjust Enrichment States Subclass.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf other members of the Class and State Subclasses described in this Complaint, respectfully request that:

A. the Court certify the Class and State Subclasses pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3), and adjudge Plaintiffs and their counsel to be adequate representatives thereof;

B. the Court enter an Order requiring ConAgra to pay Plaintiffs' and the other Class and State Subclasses members' economic, monetary, actual damages (including multiple damages), consequential, compensatory or statutory damages, whichever is greater; and, if its conduct is proved willful, awarding Plaintiffs and the other Class and States Subclass members exemplary damages to the extent provided by law;

C. the Court enter an Order awarding restitution and disgorgement of all monies ConAgra acquired by means of any act or practice declared by this Court to be wrongful, or any other appropriate remedy in equity, to Plaintiffs and the other members of the Class and State Subclasses;

D. the Court enter an Order awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining ConAgra from continuing the unlawful practices set forth above; directing ConAgra to cease its deceptive and misleading marketing campaign in which it describes Wesson Oils as "100% Natural"; and directing ConAgra to disgorge all monies ConAgra acquired by means of any act or practice declared by this Court to be wrongful;

E. the Court enter an Order awarding Plaintiffs, individually and on behalf of the other members of the Class and State Subclasses, their expenses and costs of suit, including reasonable attorneys' fees and reimbursement of reasonable expenses, to the extent provided by law;

1 F. the Court enter an Order awarding to Plaintiffs individually and on
2 behalf of the other members of the Class and State Subclasses, pre- and post-
3 judgment interest, to the extent allowable; and

4 G. for such other and further relief as may be just and proper.

5 **JURY DEMAND**

6 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial
7 by jury of all claims in this Complaint so triable.

8 DATED: January 12, 2012

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DECLARATION OF SERVICE BY CM/ECF AND/OR MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, employed in the County of Los Angeles, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is One California Plaza, 300 South Grand Avenue, Suite 3900, Los Angeles, California 90071-3149.

2. Declarant hereby certifies that on January 12, 2012, declarant served the CONSOLIDATED AMENDED CLASS ACTION COMPLAINT by electronically filing the foregoing document listed above by using the Case Management/ Electronic Case filing system.

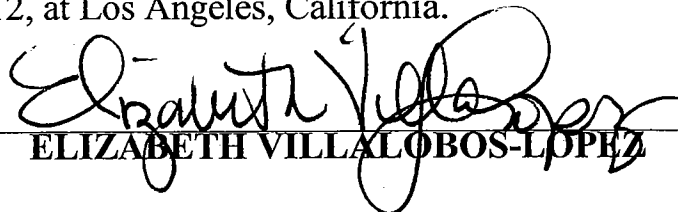
3. Declarant further certifies:

☒ All participants in the case are registered CM/ECF users and that service will be accomplished by the court's CM/ECF system

☐ Participants in the case who are registered CM/ECF users will be served by the court's CM/ECF system. Participants in the case that are not registered CM/ECF users will be served by First-Class Mail, postage pre-paid or have dispatched to a third-party commercial carrier for delivery to the non-CM/ECF participants.

4. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 12th day of January, 2012, at Los Angeles, California.


ELIZABETH VILLALOBOS-LOPEZ

**IN RE CONAGRA FOODS, INC.
SERVICE LIST**

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